

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

GLEN CRAIG,

Plaintiff,

- against -

POPMATTERS MEDIA, INC.

Defendant.

Docket No. 3:18-cv-1713

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Glen Craig (“Craig” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant PopMatters Media, Inc. (“Pop Matters” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of an iconic copyrighted photograph of American jazz trumpeter and composer Miles Davis, owned and registered by Craig, a professional photographer. Accordingly, Craig seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or transacts business in Illinois.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Craig is a professional music photographer in the business of selling his photographs having a usual place of business at 30-60 Crescent St. 2C, Astoria, NY 11102. Craig has won numerous awards including Leica's Photokina Top Photographer Award in 2014 and his and his work has appeared in galleries around the world.

6. Upon information and belief, Pop Matters is a domestic business corporation duly organized and existing under the laws of the State of Illinois, with a place of business at 3501 North Southport Avenue Suite 466, Chicago, IL 60657. Upon information and belief Pop Matters is registered with the Illinois Department of State Division of Corporations to do business in the State of Illinois. At all times material, hereto, Pop Matters has owned and operated a website at the URL: www.popmatters.com (the "Website").

STATEMENT OF FACTS

A. Background and Plaintiff's Ownership of the Photograph

7. Craig photographed American jazz trumpeter and composer Miles Davis (the "Photograph"). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. Craig is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

9. The Photograph was registered with the United States Copyright Office and was given registration number VAu001192067. See Exhibit B.

B. Defendant's Infringing Activities

10. On or about April 20, 2016, Pop Matters ran an article on the Website titled *Various Artists: Miles Ahead Original Motion Picture Soundtrack*. See URL <https://www.popmatters.com/various-artists-miles-ahead-original-motion-picture-soundtrack->

2495440023.html. The article prominently featured the Photograph. A true and correct copy of the article is attached hereto as Exhibit C.

11. Pop Matters did not license the Photograph from Plaintiff for its article, nor did Pop Matters have Plaintiff's permission or consent to publish the Photograph on its Website.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST DEFENDANT)
(17 U.S.C. §§ 106, 501)

12. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-11 above.

13. Pop Matters infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website. Pop Matters is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

14. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

15. Upon information and belief, the foregoing acts of infringement by Defendant have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

16. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

17. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Photograph, pursuant to 17 U.S.C. § 504(c).

18. Plaintiff further is entitled to his attorney's fees and full costs pursuant to 17 U.S.C. § 505.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Pop Matters be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. That Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;
5. That Plaintiff be awarded pre-judgment interest; and
6. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
September 11, 2018

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